IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 928 to 958 of 2002
with
FIRST APPEAL NO. 959 TO 989 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

LALUBHAI VIRSANGBHAI

Appearance:

1. First Appeal No. 928 of 2002
   MS SEJAL K MANDAVIA for Petitioner No. 1-2
   MR YATIN SONI for Respondent No. 1
   MR HITESH B PATEL for Respondent No. 1
2. First Appeal No. 959 of 2002
   MS SEJAL K MANDAVIA for Petitioner No. 1
   MR YATIN SONI for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and

MR.JUSTICE D.A.MEHTA

Date of decision: 06/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Ms.S.K.Mandavia, learned advocate for appellant no.1, Mr.A.J.Desai, learned AGP for appellant no.2, and Mr.Yatin Soni, learned advocate for respondent claimant.

2. Being aggrieved by a common judgement and award dated 19.8.1999 by the Special Judge (LAR) Ahmedabad (Rural) Mirzapur under Section 18 of the Land Acquisition Act (for short "the Act") in Land Reference Case Nos. 427 to 459 of 1998 and 460 to 490 of 1998, the appellant has preferred these appeals in two groups being First Appeal Nos.928 to 958 of 2002 and 959 to 989 of 2002 under Section 54 of the Act, whereby the Reference Court awarded additional compensation at the rate of Rs.28 per sq. mtr.

3. In the aforesaid two groups of appeals, first group of appeals being First Appeal Nos.928 to 958 of 2002 relates to Land Reference Cases Nos.460 to 490 of 1998 in which Notification under Section 4(1) of the Act came to be gazetted on 22.7.1993; Notification under Section 6 of the Act came to be gazetted on 12.8.1994 and the award under Section 11 of the Act awarding compensation of Rs.0.95 paise per sq. mtr. came to be declared on 23.12.1996.

The second group of appeals being First Appeal Nos. 959 to 989 of 2002 relates to Land Reference Cases Nos.427 to 430 of 1998 and 432 to 448 of 1998, the Notification under Section 4(1) of the Act came to be gazetted on 5.5.1993; Notification under Section 6 of the Act came to be gazetted on 24.8.1994 and award under Section 11 of the Act awarding compensation of Rs.0.95 paise per sq. mtr. came to be declared on 23.12.1996.

4. The claimants dissatisfied with the compensation awarded by the Land Acquisition Officer under Section 11 of the Act, made a request for a Reference to the Civil Court. Consequent thereupon, the Reference under Section 18 of the Act came to be made to the Civil Court. The Reference Court, appreciating the evidence oral as well as documentary, awarded additional compensation of Rs.28 per sq. mtr. i.e in all Rs.29 per sq. mtr.

5. Taking into consideration the Notification under Section 4(1) of the Act, published on 21.6.1983, relating to the lands of the adjoining village Koth wherein under Section 11 of the Act the Land Acquisition Officer awarded Rs.3.50 paise per sq. mtr. and the Reference Court under Section 18 of the Act awarding additional compensation of Rs.8.50 paise per sq. mtr. i.e. in all Rs.12.00 per sq. mtr. in Land Reference Case Nos. 26 and 27 of 1987. In the present case, the Reference Court awarded additional compensation of Rs.28 per sq. mtr. and in all Rs.29.00 per sq. mtr.

6. The Acquiring Body as appellant no.1 and the State as appellant no.2 have assailed this award / order of the Reference Court under Section 18 of the Act granting additional compensation of Rs.28 per sq. mtr.

7. It is submitted by Ms.S.K.Mandavia, learned advocate for appellant no.1 Acquiring Body that the amount of additional compensation of Rs.28.00 per sq. mtr. is without any legal basis and that the claimants have not adduced any evidence to show that the fertility of the land of village Jawaraj under acquisition and the fertility of the land of village Koth is the same. It is further contended that it was for the claimant to adduce the necessary evidence to show the comparative yield of the lands of these villages so as to compare the same for the purpose of determining market value of the land and the resultant compensation on the date of Notification under Section 4(1) of the Act issued in respect of the land of village Jawaraj. It is further contended that Notification under Section 4(1) of the Act in respect of the land of village Koth is of 1983, and that the index suggesting the sale transactions produced by the acquiring body suggests that the price of the land in question is far less than the market value fixed by the Reference Court and that there is no reason to interfere with the compensation awarded by the Land Acquisition Officer under Section 11 of the Act.

8. In the first group i.e. in Land Reference Cases Nos.460 to 490 of 1998, one of the claimants Gagubhai Virsangbhai Padhiyar has been examined at Exh.88, whereas in the other group i.e. Land Reference Cases Nos.427 to 430 of 1998 and 432 to 448 of 1998 and 450 to 459 of 1998, one of the claimants Vajesingh S. Dabhi has been examined at Exh.84. We have perused the evidence of both these claimants / witnesses from the R & P requisitioned from the Reference Court. The evidence of both the claimants / witnesses is identical.

9. Both these witnesses have deposed that they have been giving evidence on behalf of all other claimants of their respective group and that their land is levelled and fertile land of a higher value and that they have been taking one crop in a year; they have been taking the crop of cotton, juvar etc. That at the time of acquisition the price of one mond (20 kg.) of cotton was Rs.100/- to 125/-. It has been deposed that the distance between village Jawaraj and village Koth is 3 kms.; he has seen the land of village Koth earlier acquired and that in respect of land of village Koth the Reference Court awarded Rs.8.50 paise per sq. mtr. by way of compensation and the land of witnesses and the land acquired of village Koth is at a distance of 1/2 km. It has been stated that the same crops are being taken in the land under acquisition and the land of village Koth is already acquired earlier. That the type of land of village Koth and village Jawaraj is the same and are of higher value and same potentiality.

In cross-examination it has been deposed that the land in respect of which the Gujarat Electricity Board has paid the compensation, is also of the same type and potentiality like that of the land under acquisition and there are common boundaries of both these villages, and the claimants also should be paid higher compensation. The witness has denied the suggestion that the price of the land under acquisition and the surrounding land would not be the same. It is pertinent to note that in the cross-examination it has not been suggested to the witness that the fertility / potentiality of the land of village Koth acquired earlier is superior than the fertility / potentiality of the land of village Jawaraj nor it is suggested that the land of village Jawaraj is inferior in quality and fertility to the land of village Koth.

10. It emerges from the evidence of the witness Jayantbhai Bholabhai Patel at Exh.90 and Exh.86 respectively that the land under acquisition are jirayat land and that the crop of cotton, Bajara etc. was taken. It is pertinent to note that witness examined at Exh.90 and Exh.86 respectively by the acquiring body has not deposed anything as regards the fertility and quality of the lands of village Koth nor it has been deposed that the lands of village Jawaraj is in any manner inferior in fertility, potentiality and quality than the lands of village Koth. It is suggested from the evidence on record that distance between the lands of village under acquisition and the land of village Koth earlier acquired is 1/2 km. The Reference Court has for the purpose of

determining the market value has relied on the notification dated 21.6.1983 issued for the purpose of acquisition of agricultural land of village Koth. As pointed out earlier, the Land Acquisition Officer awarded compensation at the rate of Rs.3.50 paise per sq. mtr. which came to be enhanced under Section 18 of the Act i.e. to in all Rs.12.00 per sq. mtr. The Reference Court in absence of any other satisfactory evidence has relied upon the Notification dated 21.6.1983 issued under Section 4 of the Act in respect of village Koth and accepting principle of adding 10% appreciation in the market value / price of the land, has determined the market value of the land in question at the rate of Rs.28.00 per sq. mtr. additionally.

11. Ms. S.K.Mandavia, learned advocate has relied on the decision in the case of Kanwar Singh and Others Vs. Union of India, (1998) 8 SCC 136 and contended that principle of adding 10% appreciation in the value of the land is not proper and that unless otherwise proved, the situation and potentiality of land situated in two different villages would be different and, therefore, the principle of adding 10% increase per year in the valuation of the land cannot be accepted.

12. It may be appreciated that in the instant case, the distance between two lands acquired under the provisions of the Act of village Koth and village Jawaraj is 1/2 km. As pointed out earlier, the witness Exh.90 and Exh.86 respectively on behalf of acquiring body has not deposed a word about the fertility, quality, situation and potentiality of the land of village Koth as well as Jawaraj. Even during the cross-examination of the claimants at Exh.88 and Exh.84 respectively, no suggestion has been made on behalf of acquiring body that the lands of village Koth and village Jawraj are not similar as regards the situation, potentiality, fertility and that the lands of both these villages differ on such counts. In absence of evidence to this effect the Reference Court is perfectly justified in accepting the principle of adding 10% appreciation per year in the valuation of the land and for this reason, the principle laid down in the case of Kanwar Singh and Others (supra) would not be of any assistance to the appellants in the present group of appeals.

13. Mr. Yatin Soni, learned advocate for the claimants has placed a copy of the judgment in First Appeal Nos. 201 of 1998 with First Appeal No.202 of 1998 decided on 17.10.2002 by the Division Bench of this Court arising from the award / judgement under Section 18 of

the Act in respect of land of village Koth which came to be acquired by a Notification under Section 4(1) of the Act dated 21.6.1983 and contended that the order of the Reference Court awarding additional compensation of Rs.8.50 paise per sq. mtr. in respect of the lands of village Koth by the aforesaid notification, has been affirmed by the Division bench of this Court.

In the case of Deputy General Manager, ONGC Vs. Chaturbhai Lalaji and Others, XXXIX (1) GLR 130, it has been held by the Division Bench of this Court that for the purpose of determination of compensation under Section 23 of the Act, reasonable rise for appreciation during the period subsequent to the notification under Section 4(1) has to be considered. Following this principle in the present case, 10% rise for appreciation during the period subsequent to the notification under Section 4(1) of the Act dated 21.6.1983 issued in respect of land of village Koth, has to be taken into consideration for the purpose of determining the compensation under Section 23 of the Act in respect of the land in question.

14. Mr. A.J.Desai, learned AGP has contended that even taking 10% rise every year to the amount of Rs.12.00 per sq. mtr. as awarded in respect of the land of village Koth considering the time gap between the notification under Section 4(1) of the Act dated 21.6.1983 and notification under Section 4(1) of the Act dated 27.2.1993 and 5.5.1993 respectively compensation payable would come to Rs.24.00 per sq. mtr. in all.

There is sufficient justification in the submission of Mr. Desai on this core looking to the time gap between the Notification under Section 4(1) of the Act in respect of land of village Koth and the Notification under Section 4(1) of the Act in respect of land of village Jawaraj.

15. Appreciating the evidence on record as well as the legal position, we are of the opinion that the present appeals would be required to be partly allowed to the extent that the claimants in each of the Reference Cases would be entitled to additional amount of compensation at the rate of Rs.23.00 per sq. mtr. and considering the amount of Rs.0.95 paise per sq. mtr. awarded under Section 11 of the Act, the claimants in each of the reference case would be entitled to compensation of in all Rs.24.00 per sq. mtr. with all statutory benefits under the Act.

16. In view of the above, all these appeals are partly allowed to the aforesaid extent with no order as to costs. Registry is directed to place copy of this order on the file of all connected matters.

17. The appellants in both these group of appeals i.e. acquiring body shall deposit the amount of compensation at the aforesaid rate together with all statutory benefits admissible under the Act within 12 weeks from the date the certified copies of this order is made ready. It is clarified that the interest would be paid to the claimants on the aggregate amount.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

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